

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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MICHAEL PERKINS,

Plaintiff,

-vs-

D.F. NAPOLI, et al.,

Defendants.

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DECISION AND ORDER

08-CV-6248 CJS

On September 28, 2011, the Honorable Jonathan W. Feldman, United States Magistrate Judge, issued an Order addressing several non-dispositive pre-trial motions in this action. See, Order (Docket No. 108). Rule 72(a) of the Federal Rules of Civil Procedure requires that any objections to such a motion be filed within fourteen days, or they are waived. Plaintiff did not file a timely objection.

Instead, more than two months later, he filed a motion for reconsideration (Docket No. 112), objecting to Judge Feldman's ruling, and essentially requesting the same relief that Judge Feldman denied. Plaintiff designates the motion as being made pursuant to FRCP 60(b)(3), which provides for relief from a judgment or order obtained by fraud, misrepresentation or misconduct. "A Rule 60(b)(3) motion cannot be granted absent clear and convincing evidence of material misrepresentations, and to prevail a movant must show that the conduct complained of prevented the moving party from fully and fairly presenting his case." *Entral Group Intern., LLC v. 7 Day Cafe & Bar*, No. 07-1122-cv, 298 Fed.Appx. 43, 44, 2008 WL 4726306 at \* 1 (2d Cir. Oct. 28, 2008) (citations and internal quotation marks omitted). Plaintiff has not met this standard.

Plaintiff also filed a motion for appointment of counsel. (Docket No. 122). The Court has reviewed the application using the applicable standard, *see, Hendricks v. Coughlin*, 114 F.3d 390, 392 (2d Cir. 1997) and *Hodge v. Police Officers*, 802 F.2d 58 (2d Cir. 1986), and finds that appointment of counsel is not warranted.

ORDER

Accordingly, it is hereby

ORDERED, that Plaintiff's applications [#112] & [#122] are denied.

Dated: Rochester, New York  
July 19, 2012

ENTER:

/s/ Charles J. Siragusa  
CHARLES J. SIRAGUSA  
United States District Judge